

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

TAMAR TESSLER, an individual,

Plaintiff,

v.

DAN ZADOK, an individual,

Defendant.

Case No. 2:08-cv-05695-R-RC

**ORDER DENYING DEFENDANT  
DAN ZADOK'S MOTION TO SET  
ASIDE DEFAULT JUDGMENT,  
UPDATED PURSUANT TO THE  
OCTOBER 31, 2011 MANDATE BY  
THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH  
CIRCUIT**

1 On March 15, 2010, the following motion came on for hearing: *Defendant's*  
2 *Motion to Set Aside Default Judgment*. On March 18, 2010, the Court issued an  
3 order denying *Defendant's Motion to Set Aside Default Judgment*. Defendant  
4 appealed to the United States Court of Appeals for the Ninth Circuit. On October  
5 31, 2011, the Court of Appeals issued its mandate. On December 7, 2011, this  
6 Court set a January 9, 2012 hearing on the mandate of the Court of Appeals, and  
7 served notice of this hearing on the parties. On January 9, 2012, this Court held its  
8 hearing. Counsel for Plaintiff appeared at the hearing, but neither Defendant nor  
9 counsel for Defendant appeared at the hearing. Pursuant to the Ninth Circuit's  
10 ruling, the Court clarifies the grounds upon which it denies *Defendant's Motion to*  
11 *Set Aside Default Judgment*.

12 First, the Court denies the motion because the default resulted from  
13 Defendant's culpable conduct. *Falk v. Allen*, 739 F.2d 461, 462 (9th Cir. 1984).  
14 Specifically, Plaintiff's opposition to Defendant's motion to set aside the default  
15 judgment includes exhibits 1 through 11 which demonstrate that Defendant had  
16 hired counsel, that Defendant's counsel executed a stipulation on his letterhead  
17 extending the time to file a responsive pleading, that Plaintiff's counsel  
18 corresponded extensively with Defendant's counsel, and that Plaintiff's counsel  
19 notified Defendant's counsel several times before actually requesting entry of  
20 default. Moreover, exhibits 12 through 19 demonstrate that Plaintiff's counsel  
21 served several subsequent documents concerning the entry of default to  
22 Defendant's counsel and to Defendant before this Court finally entered the default  
23 judgment. Defendant did not appear and did not oppose entry of default during any  
24 of these proceedings. Instead, Defendant chose not to seek to file any responsive  
25 pleading or to appear. Accordingly, the default resulted from Defendant's culpable  
26 conduct and *Defendant's Motion to Set Aside Default Judgment* is denied on this  
27 first ground.

28 Second, the Court denies the motion because the evidence demonstrates that

1 service of process was properly effectuated in this action. Exhibit 20 to Plaintiff's  
 2 opposition to Defendant's motion to set aside the default judgment is a declaration  
 3 under penalty of perjury from a process server demonstrating three attempts at  
 4 personal service of the summons and complaint upon Defendant, the final of which  
 5 resulted in substituted service. Exhibit 21 to Plaintiff's opposition to Defendant's  
 6 motion to set aside the default judgment is a declaration under penalty of perjury  
 7 from a process server stating that the summons and complaint also were mailed to  
 8 Defendant's residence. This constitutes valid service of process. *Defendant's*  
 9 *Motion to Set Aside Default Judgment* is denied on this further ground that the  
 10 evidence demonstrates that service of process was effectuated.

11 *Defendant's Motion to Set Aside Default Judgment* and the mandate of the  
 12 United States Court of Appeals for the Ninth Circuit having been fully considered,  
 13 and a decision having been fully rendered,

14 IT IS HEARBY ORDERED that *Defendant's Motion to Set Aside Default*  
 15 *Judgment* is denied for the reasons stated.

16  
 17 Dated: January 25, 2012

  
 HONORABLE MANUEL L. REAL  
 UNITED STATES DISTRICT COURT  
 JUDGE

20  
 21 Respectfully submitted,

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